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EXAMINER

GRAY, L

ART UNIT

PAPER NUMBER

1734

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/133,888

Applicant(s)  
Johnson

Examiner  
Linda L. Gray

Group Art Unit  
1734



☒ Responsive to communication(s) filed on 8-13-98

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 45-51 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 45-51 is/are rejected.

☒ Claim(s) 49-51 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on 8-13-98 <sup>(formal)</sup> is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on 8-13-98 <sup>(for formal)</sup> is ☒ Approved ☐ Disapproved.

☒ The specification is objected to by the Examiner.

☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

## **DETAILED ACTION**

### **Oath/Declaration**

1. The declaration is defective. A new declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required, MPEP §602.01 and §602.02. The declaration is defective because the filing dates of 60/036,186 and 60/035,051 are incorrect.

### **Drawings**

2. The drawings are objected to because **one**, the following signs point to the incorrect location: **(a)** 360 at the top, 430 above 1267, 1090 (Fig 1), **(b)** 420 (Fig 2), **(c)** 900, 960 (Fig 12), **(d)** 2004 (Fig 18), **(e)** 2152 (Fig 20A), **(f)** 2116 (Fig 25), **(g)** 2038 (Fig 27), **(h)** 2038, 2044, 2047 (Fig 28), **(I)** 2047 (Fig 30), **(j)** 410 (Fig 32), and **(k)** 12,1 4 (Fig 45); **two**, sign 2146 points to a first location in Figure 34, a second location in Figure 35, and a third location in Figures 36-38; **three**, sign 2043, Figure 18, should be 2041; and **four**, sign D, Figure 48, along the bottom should be D'.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference signs not mentioned in the description: **(a)** 21 (Fig 1), **(b)** 755 (Fig 10, 11), **(c)** 990 (Fig 14), **(d)** 1015 (Fig 15), **(e)** V' (Fig 17), **(f)** w'', **(g)** w^^ (Fig 19), **(h)** 16 (Fig 19) [note: sign 16 in the description is for end 16 in Fig 44], **(I)** 211 (Fig 20A), **(j)** 2057 (Fig 20A), **(k)** 2061 (Fig 32), **(l)** 2160 (Fig 35, 37), **(m)** 3090 (Fig 39A), **(n)** 5006 (Fig 43), **(o)** 2 denoting a cross section (Fig 44) [note: sign 2 in the description is for an end 2 in Fig 44-45], **(p)** 155 (Fig 48), **(q)** 158' (Fig 48-49), **(r)** 180 (Fig 56), **(s)** 400 (Fig 56) [note: sign 400 in the description is for a control device in Fig 1], **(t)** 243 (Fig 56), and **(u)** 3' (Fig 57).

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs mentioned in the description: **(a)** 12 [note: when used to define a seal and not phantom lines 12 in Fig 54], **(b)** 32 [note: when used to define a web and not a cylinder in Fig 46], **(c)** 70 [note: when used to define a dotted line and not an aperture in Fig 54], **(d)** 105, **(e)** 150 [note: when used to define nip rollers and not tape 150 as in Fig 56], **(f)** 160, a motor and 160, a punch device, **(g)** 170, **(h)** 180 [note: 180 in Fig 56 is not air], **(I)** 200 [note: when used to define a cut and not a loop side as in Fig 4 or an apparatus as in Fig 56], **(j)** 245, **(k)** 310, **(l)** 520 [note: when used to define a dancer and not an arm as in Figure 2], **(m)** 600, **(n)** 710, **(o)** 775, **(p)** 832, **(q)** 1000, **(r)** 1005, **(s)** 1070, **(t)** 1140, **(u)** 1160, **(v)** 1202, **(w)** 1220, **(x)** 2056', **(y)** 2063, **(z)** 2065, **(aa)** 2113-17, **(bb)** 2129A, **(cc)** 2148, **(dd)** 2155, **(ee)** 2183, **(ff)** 2210 [note: when used to define a barrier and not a first extruded base tape as in Fig 41], **(gg)** 2567, **(hh)** 5005, and **(ii)** 72 [note: when used to define a bilaminate and not an aperture as in Figure 54 or an upper grip as in Fig 57].

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because **(a)** 2 designate "an end" and "a cross section" (Fig 44), **(b)** 12 designates "a seal" and "phantom lines", **(c)** 32 designate

"a web" and "a cylinder", **(d)** 70 designates "an aperture" and "a dotted line", **(e)** 72 designates "an aperture", "a bilaminate", and "an upper grip part", **(f)** 74 designates "a end" and "an arrow", **(g)** 76 designates "storage volume" and "an end", **(h)** 80 designates "temporary storage" and "a seal", **(I)** 150 designates "nip rollers" and "a tape", **(j)** 160 designates "a motor" and "a punch device", **(k)** 180 designates "air" and "an item in Figure 56" not yet defined, **(l)** 200 designates "a cut", "a loop side", and "an apparatus", **(m)** 202 designates "a second step" (Fig 3) and "a web", **(n)** 520 designates "a dancer" and "an arm", **(o)** 2045 designates "an arrow" and "an end", **(p)** 2056 designates "a vacuum" and "a seal", **(q)** 2058 designates "a seal" and "a top end", **(r)** 2059 designates "a seal bar" and "a bottom end", **(s)** 2162 designates "a seal bed" and "a seal", and **(t)** 2210 designates "a first extruded base tape" and "a barrier".

### **Specification**

6. The disclosure is objected to because **(a)** 110 should be 100 (p 15, L 9; 17, L 2), **(b)** 1A should be 1 (p 15, L 21), **(c)** 100 (second) should be 110 (p 17, L 6), **(d)** 1070 should be 1110 (p 23, L 5), **(e)** delete 1265 (p 23, L 18), **(f)** 2004 is incorrect (p 25, L 13), **(g)** 2018 should be 2014 (p 28, L 9), **(h)** the drawings are not colored photographs (p 28, L 11), **(I)** 403 is incorrect (p 30, L 5), **(j)** 2047 should be 2179 (p 30, L 19), **(k)** 2130 is incorrect (p 31, L 10), **(l)** 2130G is incorrect (p 31, L 14 and 21), **(m)** 2130B is incorrect (p 31, L 22), **(n)** 2109 should be 2109A (p 32, L 1), **(o)** 2056 (first) should be 2056' (p 32, L 23), **(p)** 2154 is incorrect (P 34, L 23), **(q)** 1140 2200 is incorrect (p 36, L 3), **(r)** 2210 should be 2206 (p 36, L 16 and 18), **(s)** 2210 should be deleted (p 36, L 19), **(t)** 2056 should be 2032, 2154 (p 37, L 17), **(u)** 1140 should be 2138 (p 37, L 20 and 22), **(v)** insert "2058," before 2060 (p 39, L 5), **(w)** 2043 should be 2041 (p 27, L 6), **(x)** 100A in the disclosure should be 270, **(y)** 114 in the disclosure should be 280, and **(z)** 2000 should be 2200 (p 36, L 2).

7. The use of the trademark DELRIN (p 32, L 8) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the trademarks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks. Also, see TEFLON (p 32, L 11).

8. Applicant is reminded of the proper language and format for an abstract of the disclosure:

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because **(a)** "The present invention includes" (L 1), **(b)** "of the present invention" (L 15), MPEP §608.01(b).

**Claim Objections**

9. **Claims 49-51 are objected to because (a) claims 49-50, "legs" (L 2) should be "leg" and (b) claim 51, "or flange" (L 2-4, all occurrences) should be deleted.**

**Claim Rejections - 35 USC § 112**

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. **Claims 48-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.**

**Claim 48**, "said fastener flange" (L 1) and "said h-shaped fastener flange" (L 2) render claim 48 indefinite because there is insufficient antecedent basis for these limitations.

**Claim Rejections - 35 USC § 103**

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. **Claims 45-48 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodolay et al. (5,776,045) in view of Kanemitsu et al. (US 5,400,568) and Johnson (US 5,664,303).**

**Claims 45 and 47**, Bodolay et al. teach securing fastener assembly 57 to web 14 where assembly 57 includes a fastener element and a mating fastener element (c 2, L 14-17; c 6, L 7-10), forming walls of a bag from web 14 where one side of assembly 57 is sealed to one wall of the bag, and sealing the other side of assembly 57 to the other wall of the bag where a top seal between the front and back walls is made by sealing such together (c 6, L 51-57). The bag has top and bottom ends, two opposing walls, and a top

seal. The fastener and mating fastener elements make up male and female portions where the female portion receives the male portion.

*The difference between claims 45 and 47 and Bodolay et al. is that Bodolay et al. do not teach that assembly 57 includes a lip on the elements such that one of the lips is connected to web 14 and where the lips are then sealed between the front and back walls at the top seal.*

Kanemitsu et al. teach that the use of lips 2C and 3C facilitates a proper adjustment of the intermeshing strength of items 2B and 2C as well as other important properties of the assembly (c 1, L 9-17; c 6, L 10-64; c 9, L 23, to c 13, L 38). Also, Johnson teaches sealing lip 26 of a fastener assembly between front wall 42 and rear wall 42 of a reclosable bag to provide a means for hanging the bag (c 1, L 60, to c 3, L 15).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. that assembly 57 includes lips on the elements such that one of the lip connected to web 14 and where the lips are then sealed between the front and back walls at the top seal because Kanemitsu et al. teach that the use of lips under a fastener assembly facilitates a proper adjustment of the intermeshing strength of items of the assembly that interlock as well as other important properties of the assembly and Johnson teaches sealing a lip of a fastener assembly between front and rear walls of a reclosable bag to provide a means for hanging the bag. Since the top seal is made by sealing the front and back walls together, the lip therebetween is seals to both of the walls simultaneously.

**Claim 46**, in Bodolay et al. sealing occurs after the walls are formed. **Claim 48**, assembly 57 of Bodolay et al. modified is substantially h-shaped where the lips form the legs and the elements are connected to the lips.

**Claim 51**, in Bodolay et al. there is provided a step of providing web 34, in a roll, of assembly 57 material, cutting web 34 to form assemblies 57 (c 4, L 32-63).

*The difference between claim 51 and Bodolay et al. is that Bodolay et al. do not teach sealing the cut ends of assemblies 57.*

It is conventional to seal the cut ends of a cut item to prevent tearing and fraying at the ends, and it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided in Bodolay et al. sealing of the cut ends of assemblies 57 to prevent tearing and fraying at the ends.

### **Prior Art of Record**

**14.** The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure: La Pierre teaches providing legs of a fastener with a barrier material to prevent sealing of opposing parts of the fastener where the material is extruded with the fastener during formation of the fastener (c 8, L 10, to c 11, L 18).

### **Allowable Subject Matter**

**15.** Claims 49-50 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

**16.** The following is a statement of reasons for the indication of allowable subject matter:

**Claim 49**, while the prior art of record teaches providing a barrier layer on the inside wall of both legs of a fastener to make such nons-sealing, the prior art of record does not teach applying a barrier tape per se to an inside wall of the legs of assemblies 57 of Bodolay et al. modified.

**Claim 50**, while the prior art of record teaches providing a barrier layer on the inside wall of both legs of a fastener, the prior art of record does not teach a step of coating per se an inside wall of the legs of assemblies 57 of Bodolay et al. modified to make such non-sealing.

**17.** Since allowable subject matter has been indicated, Applicant is encouraged to submit formal drawings in response to this Office action. The early submission of formal drawings will permit the Office to review the drawings for acceptability and to resolve any informalities remaining therein before the application is passed to issue. This will avoid possible delays in the issue process. As allowable subject matter has been indicated, Applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with, 37-CFR 1.111(b) and MPEP § 707.07(a).

### **Response**

**18.** The substitute specification and formal drawings have been entered. The enclosed Notice of Draftperson's pertains to the formal drawings. The amendments to the claims have been entered in part. Specifically, the amendment to claim 47 (L 5, after "material") has not been entered because it does not comply with 37 CFR 1.121. The amendment is longer than 5 words. The amendment was, however, considered during examination. Applicant should rewrite claim 47 to include this amendment following 37 CFR 1.121. With respect to Applicant's comment on page 3 (first para) of the amendment filed 8-13-98, no such petition is of record.

**Conclusion**

**19.** Any inquiry concerning this communication or earlier communications should be directed to Examiner Linda L. Gray at (703)308-1093, Monday-Friday from 8:00 am to 4:30 pm. The necessary fax numbers are (703)305-7718 (official faxes), (703)305-7115 (unofficial faxes), and (703)305-3599 (faxes after final Office action).

llg  
March 13, 2000

*Linda L. Gray*  
**Linda L. Gray**  
**Patent Examiner**  
**Art Unit 1734**